IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 897 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

ABDUL TAJ MOHAMMAD MAKRANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 897 of 2002

MR RS SANJANWALA for Petitioner No. 1-2

MR VM PANCHOLI, LD.ADDL.PUBLIC PROSECUTOR for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/04/2002

ORAL JUDGEMENT

#. This is an application under Section 482 of the Criminal Procedure Code, 1973, for quashing the FIR being CR No.III-3/2002 registered against the two petitioners

and six other accused persons before Nizar Police Station in Surat District for the offences punishable under Sections 70(A) and 81 of the Bombay Prohibition Act.

#. It has been alleged in the said FIR that on 25.1.2002 at about 8:30 p.m. a truck was found going on a public road and when it was intercepted, it was noticed that rotten jeggary was there in the said truck and, therefore, the truck was detained and investigation was undertaken. Ultimately, FIR was filed against the present two petitioners who are accused Nos.1 and 2 respectively shown in the said FIR. It has been mainly alleged against the petitioners herein that the petitioners and other accused persons named in the FIR were guilty of the said offence as they were found carrying rotten jeggary valued at Rs.3,45,900/- without any pass or permit. The two petitioners have come forward with this application stating that there is no offence committed by them and there is no material to show that some offence is committed by them and therefore, the FIR field against them be quashed.

#. Rule was issued. Mr.V.M.Pancholi, learned APP appears in response to the service of rule on behalf of the State. The officer concerned is also reportedly present before the Court as stated by the learned APP. I have heard the learned advocates for the parties and have perused the papers. On hearing the learned advocates for the parties it has been noticed that except the statements of the two petitioners there is no other material on record to show that there is any incriminating material against the petitioners and there is no dispute about the same. The two petitioners herein are shown as accused in the FIR and therefore, investigation against them has proceeded against these two petitioners by showing them as accused persons. Therefore, the statements given by the two petitioners are the statements given by them as accused persons and they cannot be read for any purpose. Therefore, the incriminating part in the said two statements of these two petitioners cannot be taken into consideration for any purpose. Once the statements of these two petitioners are excluded from consideration, then the learned APP also states that there is no material available on record on the basis of which it can be said that these two petitioners are guilty of offence punishable under the Bombay Prohibition Act, 1949.

#. An attempt was made on the previous date by the learned APP, that the Investigating Officer wanted to record the statement of one Babubhai. Today it has been

made clear that the statement of the said witness has already been recorded and even after recording the said statement, no further material has been found out by the Investigating Officer. It is an admitted position that no further material has been collected by the Investigating Officer to show the involvement of the petitioners in the aforesaid offence. This means that except the bare statements of two petitioners, there is no further material to show the involvement of the present petitioners in the said offence. As said above, the statements made by the petitioners are the statements made by them before the police and at the time of making the statements they were already accused persons before the said Investigating Officer and therefore, these statements cannot be read and as said above, there is no further material against them.

#. This shows that no offence is made out against the petitioners and consequently the application is required to be allowed and the FIR as stated above is required to be quashed qua the petitioners only.

#. For the reasons stated above, this application is allowed and FIR being CR No.III-3/2002 registered before Nizar Police Station, Surat District is ordered to be quashed qua the petitioners herein only. Rule is made absolute to the above extent. The investigation may proceed against the remaining accused persons.

(D. P. BUCH, J.)

kks